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June 5, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 5, 2007

Case Number: TSO-0581

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

**I. Background**

The individual has held a DOE security clearance for 20 years. In August 2006, the individual was arrested and charged with Driving Under the Influence (DUI). He reported this arrest to DOE Security. This revelation prompted the Local Security Office (LSO) to conduct a personnel security interview (PSI) with the individual in November 2006. During the PSI, the individual stated that he would never drink and drive again. However, in April 2007, the individual was arrested and charged with another DUI. After this DUI, the LSO referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in June 2007 and memorialized his findings in a report (Psychiatric Report or Exhibit (Ex.) 3). In the Psychiatric Report, the DOE psychiatrist first opined that the individual meets the diagnostic criteria for Alcohol Abuse as set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition, Text Revised (DSM-IV-TR). Ex. 3 at 9. The DOE psychiatrist next opined that this mental condition is an illness which causes, or may cause, a significant defect in the individual's judgment or reliability. *Id.* at 10. At the time of the 2007 examination, the DOE psychiatrist did not believe that the individual was either rehabilitated or reformed from his Alcohol Abuse. *Id.* at 9.

In October 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory

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1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual called five witnesses, including his treating psychologist, his Human Reliability Program (HRP) staff psychologist, his Alcoholics Anonymous (AA) sponsor, his supervisor and a friend. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

## **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concern at Issue**

As stated above, the LSO cites two criteria as bases for suspending the individual's security clearance, Criteria H and J. To support Criterion H, the LSO relies on the DOE psychiatrist's opinion that the individual suffers from Alcohol Abuse, a mental condition, which causes, or may cause, a defect in the individual's judgment or reliability. The LSO also relies on the DOE psychiatrist's opinion to support Criterion J in this case, and the following information: (1) in August 2006 and in April 2007, the individual was arrested and charged with DUI; (2) two other psychologists (in addition to the DOE psychiatrist) diagnosed the individual as suffering from Alcohol Abuse and Alcohol Dependence; (3) during a PSI in November 2006, the individual stated that he would never drink and drive again but, despite his stated intent, the individual was arrested and charged with DUI in April 2007; and (4) the individual's wife and primary care physician expressed concern regarding his alcohol use. 3/

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Abuse can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

## **IV. Findings of Fact**

The relevant facts in this case are uncontested. The individual did not consume alcohol until the age of 28. Prior to that time, he was involved in sports and was not interested in alcohol or drugs. The individual married early and divorced his first wife around the age of 28. Soon after his divorce, the individual moved in with a co-worker who drank alcohol. Transcript of Hearing (Tr.) at 69. The individual reported that he began to drink as well, consuming a 12-ounce wine cooler about once a month. However, the individual's father passed away around this same time period and the individual began to drink more to cope with his grief. His consumption increased from age 28 to

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3/ The DOE psychiatrist also determined that the individual has been a user of alcohol habitually to excess.

age 41, when he typically consumed two to three 12-ounce beers or one glass of wine on a Saturday while watching sports. In addition, the individual has suffered from depression for a number of years, undergoing psychotherapy and antidepressant therapy with a clinical psychologist since 2004.

In August 2006, the individual was arrested for DUI. During the course of dining at a restaurant with a friend, the individual consumed about three Long Island Teas (alcoholic beverages) over a period of an hour. After attending a concert, the individual consumed two more Long Island Teas. Later that evening, the individual drove his friend home. As the individual was returning to his home, he was pulled over by a policeman for weaving. The police officer administered several field sobriety tests, which the individual failed. The individual was subsequently detained in jail for a brief period. He pled guilty to the DUI charge and paid \$930 in court costs and fines. The individual described this DUI arrest as “terribly embarrassing” and stated that he was disappointed and angry with himself. Tr. at 69.

In April 2007, the individual was arrested and charged with a second DUI. On this occasion, the individual was at a concert where he drank four shot bottles of vodka over a period of three to three-and-a-half hours. He drove his vehicle and was subsequently pulled over by a police officer for weaving. After the individual refused to take a sobriety test, the police officer arrested him for DUI. The individual sought professional help after his second DUI. Upon the advice of the HRP psychologist, he entered a 30-day inpatient treatment program. After completing this program, the individual entered an eight-week intensive outpatient treatment program (IOP). Three days prior to completing the IOP, the individual had a relapse. He attributed his relapse to depression regarding unresolved issues with his mother. After the individual’s relapse, he returned to treatment and successfully completed the IOP.

## **V. Analysis**

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 4/ After due deliberation, I have determined that the individual’s access authorization should not be restored. I cannot find that restoring the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

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4/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

## **A. The Diagnosis of Alcohol Abuse**

The individual did not dispute that he suffers from Alcohol Abuse under the criteria set forth in DSM-IV-TR. The pivotal question before me is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his Alcohol Abuse.

## **B. Rehabilitation and Reformation from Alcohol Abuse**

### **1. The Individual's Testimony**

At the hearing, the individual testified that he has not consumed alcohol since August 2007. He testified that he was very embarrassed by his first DUI, but that his second DUI was a "real wake-up" call. Tr. at 71. It was at this time that the individual recognized that he has a significant problem with alcohol. He testified that he knew he needed help and therefore he sought treatment advice from the HRP psychologist. *Id.* The individual further testified that he completed a 30-day inpatient treatment in May 2007, followed by an eight-week IOP. *Id.* at 75. He acknowledged that he suffered a relapse three days from the end of the IOP, but testified that he extended his IOP for another eight weeks, realizing that he still needed treatment. *Id.* at 76. The individual explained that, during the course of his IOP, he discussed the unresolved issues he had with his family, particularly his mother. He further explained that these discussions made him angry and upset, which contributed to his relapse. *Id.* He testified that since his treatment, he feels happy and fulfilled. *Id.* at 77. The individual testified that he now volunteers for the treatment program. He added that he finds it fulfilling to help others who are also dealing with alcohol problems. *Id.*

At the hearing, the individual also testified that he attends Alcoholics Anonymous (AA) about four times a week. Tr. at 78. He explained that, as a part of AA, he is encouraged to do community service. *Id.* The individual testified that he participates in a prison ministry. *Id.* at 79. He further explained that he is currently working the 12 steps of AA. The individual testified that he recently learned that his sister has cancer, but that he did not turn to drinking after receiving the news. *Id.* at 83. In order to deal with life stressors, the individual testified that he attends aftercare group meetings in addition to AA. *Id.* at 90. He also testified that his wife has been a "huge support" for him. *Id.* at 83. He concluded his testimony by stating his intention to never drink again. *Id.*

### **2. The AA Sponsor's Testimony**

The individual's AA sponsor testified that he has been sponsoring the individual for about four months. Tr. at 36. He stated that he meets with the individual two or three times a week, and that they talk on the phone once a week. *Id.* According to the AA sponsor, he is currently working through the 12 steps of AA with the individual. *Id.* The AA sponsor opined that the individual is an honest person who is "sincerely trying to work the program . . . and trying to stay sober." *Id.* at 38. The AA sponsor further opined that the individual is in an early stage of the recovery process, noting that the individual has been sober for about six months. *Id.* at 41.

### **3. The Testimony of a Supervisor and a Friend**

The individual's supervisor testified that the individual has worked for him for the past few years. Tr. at 49. He described the individual as a dependable and honest person with good judgment. *Id.* The supervisor further testified that the individual has never come to work under the influence of alcohol. *Id.* at 50.

The individual's friend testified that she has known the individual for many years. She testified that she also participates in AA and attends meetings with the individual, usually one meeting together a week and a couple of meetings on the weekends. Tr. at 53-54. The friend further testified that, based on her observations of the individual, she believes the individual is serious about his sobriety and is "living the program." *Id.* She testified that the individual has addressed the underlying problems related to his depression. *Id.* at 54. The friend explained that AA is a life-long program and that she considers herself a part of the individual's support system. *Id.* She stated that she would notice if the individual began drinking again. *Id.* The friend also testified that she has noticed a positive change in the individual since he has been working the AA program. *Id.* at 58.

### **4. Testimony of the Individual's Treating Psychologist**

The individual's treating psychologist is a licensed clinical psychologist who has had a professional relationship with the individual since June 2004. The treating psychologist testified that the individual sought treatment for depression in 2004. Tr. at 10. He explained that the individual was quick to be tearful, had a fragile, brittle mood and showed evidence of low self-esteem. *Id.* The treating psychologist has seen the individual for three courses of treatment: four times from June 2004 through August 2004, 28 times from July 2006 through June 2007, once in August 2007, and one time a week before the hearing. *Id.* He testified that the individual has made a marked improvement with his depression, noting that the individual has addressed some of his marital and family issues. *Id.* at 11.

Although the focus of the individual's treatment was the depression, the treating psychologist testified that the individual's alcohol concerns were discussed as well. *Id.* Specifically, the treating psychologist stated that the individual's alcohol problem and his jail experiences "were quite traumatic in terms of depressed mood." *Id.* at 12. He testified that he did not see the individual's depressive issues as substantially underlying his drinking problem. *Id.* at 14. However, the treating psychologist explained that the individual's long-term issues and low self-esteem "probably on occasion resulted in the excessive use of alcohol." *Id.* He further testified that, after the individual's first DUI, he discussed the option of a more intensive treatment for the individual as well as total abstinence from alcohol. *Id.* at 14, 23. When asked whether he formed an opinion about the individual's prognosis for dealing with alcohol, the treating psychologist testified that the individual has an overall positive prognosis, although it would be slightly guarded because of the individual's two DUIs. *Id.* at 13. He added that the individual has "a very substantial and invested [support] network" and that the individual is enthusiastic about his treatment, both of which bode well for the individual's future. *Id.*

## **5. The Testimony of the HRP Psychologist**

The HRP psychologist is responsible for conducting yearly psychological evaluations for employees in the HRP, a specialized security program. She also provides consultation for employees when various problems arise. The HRP psychologist testified that she met with the individual on several occasions beginning in July 2006, before the individual's first DUI. Tr. at 107. She testified that she talked with the individual at length about his depression. *Id.* She further testified that the individual sought advice from her in May 2007, after his second DUI. *Id.* at 108. Because she does not actually treat patients, the psychologist explained that she discussed treatment options with the individual. *Id.* She testified that the individual was taken out of the HRP because he was going into an inpatient program. *Id.* at 109. Just about a week before he was discharged from the inpatient program and scheduled to return to work, the psychologist testified that the individual called her and told her about his relapse. *Id.* at 110. She testified that the individual voluntarily determined that he would go back into treatment for another eight weeks. *Id.*

The psychologist opined that the individual's depression and his alcohol problem "are more tightly intertwined" than the treating psychologist believes. *Id.* She noted that, based on her conversations with the individual, the individual has probably been suffering from depression since he was a teenager. *Id.* at 111. The psychologist further noted that depression is much harder to address if one is prone to alcohol, and drinking makes depression worse. *Id.* She testified that the individual's relapse "was in a way a good thing because [the individual] had so much to do in that treatment over the summer with alcohol . . . and I think what happened was he had a lot of leftovers [issues] in terms of the depression." *Id.* at 112. She added that the individual's relapse had made his recovery "more secure because of the timing and his immediate willingness and request to stay in treatment." *Id.*

In terms of the individual's prognosis, the psychologist testified that the individual is doing very well. *Id.* She noted that the fact that the individual dealt with his sister's cancer diagnosis without drinking is a positive sign. *Id.* The psychologist further testified that, although she believes the individual has a great prognosis, she believes the first year of sobriety is the most important year. *Id.* at 113. She concluded that she would feel better giving the individual a good prognosis after one year. *Id.* The psychologist testified that the one year would be marked as starting after the individual's relapse in August 2007. *Id.* at 114.

## **6. The DOE Psychiatrist's Testimony and Report**

The DOE psychiatrist stated in his Psychiatric Report that the individual could not be considered adequately rehabilitated until he had completed at least 12 months of monitored and sustained interventions. Ex. 3 at 9. He stated that these interventions may include regular follow-up with the HRP psychologist, participation in AA with a sponsor at least twice a week for a year, total abstinence from alcohol, involvement with psychotherapeutic counseling if recommended by his treating psychologist, compliance with psychiatric medication therapy, and participation in an aftercare treatment program. *Id.* After listening to the testimony of all the witnesses in the case, the DOE psychiatrist concluded that, although he was impressed by the individual's recovery efforts,

the individual still does not show adequate evidence of rehabilitation and reformation primarily because there has been insufficient time. *Id.* at 128. The DOE psychiatrist further concluded that it has only been six months since the individual's last relapse. He further stated that the individual has a complex condition, with a dual diagnosis of depression and alcohol abuse increasing his relapse risk. *Id.* The DOE psychiatrist agreed with the HRP psychologist's opinion that the individual's relapse was a "mixed blessing" in that the individual has learned and grown a great deal from it. *Id.* at 135. He reiterated that the individual's risk of relapse is reduced after the individual has abstained from alcohol for a minimum of one year. *Id.* at 136. Finally, the DOE psychiatrist opined that the one year marker to be considered rehabilitated should begin from August 2007, after the individual's relapse. *Id.* at 134.

## **7. Hearing Officer's Evaluation**

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. *See* 10 C.F.R. § 710.27. Hearing Officers properly give deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing* (Case No. TSO-0215), <http://oha.doe.gov/cases/security/tso0215.pdf>. *Personnel Security Hearing* (Case No. TSO-0466), <http://oha.doe.gov/cases/security/tso0466.pdf>. Moreover, it is my responsibility as Hearing Officer to ascertain whether the factual basis underlying the psychiatric diagnosis is accurate, and whether the diagnosis provides sufficient grounds, given all the other information in the record, for the denial of a security clearance. *See, e.g., Personnel Security Hearing* (Case No. VSO-0068), 25 DOE ¶ 82,804 (1996). On the basis of that evaluation, I find that the diagnosis made in the present case has a proper factual basis. I am further persuaded from the testimony of the DOE psychiatrist that the individual is not yet rehabilitated or reformed.

Regarding rehabilitation and reformation, I gave considerable weight to the opinion of the DOE psychiatrist who opined that the individual needed alcohol treatment and at least twelve months of sobriety in order to achieve rehabilitation and reformation. Moreover, from a common-sense perspective, the following factors militate against restoring the individual's access authorization. Although the individual has taken positive steps toward rehabilitation, including AA, community service and aftercare treatment, it is clear that the individual is only in the early stages of recovery and is in need of further treatment to accomplish rehabilitation and reformation. As mentioned earlier, it has only been six months since the individual's last relapse. I am also persuaded by the evidence and testimony in the record that the individual's depression has significantly influenced his alcohol problems. Finally, I agree with the opinion of the DOE Psychiatrist that a minimum of one year of treatment, with maintenance of sobriety, is the minimum standard needed in this case in order to demonstrate adequate evidence of rehabilitation or reformation. The record clearly supports the



DOE psychiatrist's judgment and conclusion. 5/ Based on these reasons, I must find that the individual has not yet mitigated the security concerns associated with his use of alcohol.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth convincing evidence to mitigate the security concerns associated with both criteria at issue. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: June 5, 2008

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5/ Five days after the hearing, in February 2008, the individual was arrested for DWI after being pulled over by police and failing Field Sobriety and Breathalyzer tests. *See* DOE Incident Report. According to the DOE Incident Report which was received by OHA on March 11, 2008, the individual had received bad news concerning his sister who had been previously diagnosed with cancer. It is not known what the final disposition of this arrest is. Although information in the Incident Report supports my findings regarding the individual's rehabilitation and reformation, this information was not relied upon in reaching my decision since it was not addressed on the record at the hearing.